



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

CABLE TELEVISION

DAVID KATZ, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs

v.

COMCAST CORPORATION; COMCAST
CABLEVISION OF BURLINGTON
COUNTY, INC., COMCAST
CABLEVISION OF CENTRAL NEW
JERSEY, INC. COMCAST CABLEVISION
OF GLOUCESTER COUNTY, INC.;
COMCAST OF JERSEY CITY, INC.;
COMCAST CABLEVISION OF THE
MEADOWLANDS, INC; COMCAST
CABLEVISION OF MERCER COUNTY
INC.; COMCAST CABLEVISION OF)
MONMOUTH COUNTY, INC.; COMCAST
CABLEVISION OF NEW JERSEY, INC.;
CABLEVISION OF NORTHWEST N.J.,
INC.; COMCAST CABLEVISION OF
OCEAN COUNTY, INC.; COMCAST
CABLEVISION OF THE PLAINFIELDS,
INC.; AND ABC ENTITY NOS.1-100
(FICTITIOUS NAMES),

Defendants

ORDER GRANTING
INTERLOCUTORY REVIEW

BPU Docket No. CO99070481
OAL Docket No. CTV 10493-99

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes the oral ruling rendered by this Board at its public agenda meeting of March 29, 2000.

On March 6, 2000, Comcast Corporation and related companies (collectively "Comcast") filed a request for interlocutory review of a ruling by Administrative Law Judge (ALJ) William Gural in which ALJ Gural denied Comcast's motion for summary decision in this matter. By way of background, this proceeding originated before the Superior Court of New Jersey, Essex County, as Docket No. ESX-L-11401-98, and involves a dispute between a cable customer (Katz) and Comcast over the legitimacy of late fee charges. The Superior Court transferred the matter to the Board for disposition of those issues within the primary jurisdiction of the Board. On July 1, 1999, the matter was transferred by the Board to the Office of Administrative Law (OAL) where it was assigned to ALJ Gural for hearings. On October 6, 1999, Comcast filed a "Brief in Support of Motion for Summary Decision" which was then forwarded by the Board to the OAL for disposition.

At a February 17, 2000 prehearing conference, ALJ Gural indicated his intention not to grant Comcast's motion for summary decision and, in his Prehearing Order, dated February 24, 2000, formally denied the motion. ALJ Gural reasoned that the case must go forward so as to develop a record to determine whether Comcast has complied with the requirements of N.J.A.C. 14:18-3.24 relating to late fees.

POSITION OF COMCAST

In its March 6, 2000 letter to the Board, Comcast seeks interlocutory review of ALJ Gural's refusal to grant summary decision. Comcast argues that, at the February 17, 2000 prehearing conference, the ALJ was unaware that a motion for summary disposition had been filed by Comcast yet indicated his intention to deny such a motion. Given the ALJ's unfamiliarity with the motion prior to his conclusion that it would be denied, Comcast contends that the Board should grant interlocutory review pursuant to N.J.A.C. 1:1-14:10. Comcast further argues that its late fee charges were properly imposed pursuant to filed tariffs and that it should not have to proceed to a full factual hearing. Comcast also objects to having to produce data which it believes duplicates material it previously submitted to the Board in the context of prior rulemaking proceedings relating to late fee charges. Finally, Comcast asks that discovery be suspended pending Board review of its motion for summary disposition.

POSITION OF KATZ:

Initially, Katz argues that the motion for interlocutory review is untimely under N.J.A.C. 1:1-14.10 (b), having been filed more than five days after ALJ Gural's oral ruling. Substantively, Katz argues that the late fees charged by the Comcast companies in New Jersey are excessive and unrelated to the actual costs incurred by them in processing and collecting late payments and constitute an unlawful penalty. In addition, Katz contends that in order to determine whether or not the actual calculation and disclosure of late fee charges are in accordance with Board rules, specifically N.J.A.C. 14:18-3.24(a), a factual record must be developed.

With respect to any suspension of the discovery schedule in this matter pending Board disposition of the Comcast motion, Katz objects to delay given the already protracted

procedural history of this case. Katz further argues that the fact that certain data and information may have previously been filed by Comcast in the context of earlier rulemaking hearings, is of no relevance to the instant proceeding.

Finally, Katz notes that, although the motion was denied at the February 17, 2000 prehearing conference, the Prehearing Order itself was issued seven days thereafter, on February 24, 2000. During the intervening period, Katz argues, the ALJ could have, but did not, reverse or modify the opinion he expressed at the prehearing conference with respect to Comcast's motion for summary judgment.

POSITION OF THE RATEPAYER ADVOCATE

By letter dated March 9, 2000, the Ratepayer Advocate (Advocate) urges the Board to deny the motion for interlocutory review, arguing that Judge Gural's determination is correct and that development of a record as to Comcast's compliance is the very reason the Board transmitted this case to the OAL.

POSITION OF BOARD STAFF

Board Staff has not taken a position with respect to the motion for interlocutory review. Board Staff has informed the ALJ and the parties that its role in these proceedings is one of monitoring the dispute between the primary litigants.

CONCLUSIONS:

The grant or denial of a motion for interlocutory review is a matter within the discretion of the Board. In exercising that discretion the Board is to be guided by the criteria set forth in In re Uniform Administrative Procedure Rules, 90 N.J.85 (1982). There, the Supreme Court of New Jersey stated that:

...interlocutory review may be granted only in the interest of justice or for good cause shown. In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process or the outcome of the case. [Id. at 100]

The ALJ's ruling clearly impacts upon the identify and scope of issues in that it is, in essence, a determination that the issues involved are factual and require evidentiary hearings, as opposed to legal issues which would be amenable to summary disposition. It is also particularly important, given the genesis of this case as a Superior Court action, that the parties and the ALJ have the clearest understanding as to what issues are viewed by the Board as being within its primary jurisdiction, as well as what issues, if any, require evidentiary hearings. For such

reason, the Board FINDS that good cause exists for the grant of interlocutory review and HEREBY GRANTS such review.¹ With respect to Comcast's request that the discovery schedule be stayed pending final determination on the merits of its summary judgment motion, given the protracted procedural history of this case, discovery should proceed as scheduled so that, in the event evidentiary hearings are found to be necessary, the matter can move forward in the most expeditious fashion. The fact that Comcast may have already produced certain requested data in the context of a prior rulemaking proceeding does not alter its obligation to respond to discovery demands in the instant proceeding. Comcast's request for a stay of discovery is, therefore, DENIED.

DATED: April 10, 2000

BOARD OF PUBLIC UTILITIES
BY:

(signed)

HERBERT H. TATE
PRESIDENT

(signed)

CARMEN J. ARMENTI
COMMISSIONER

(signed)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)

EDWARD BESLOW
ACTING BOARD SECRETARY

¹ We note Katz's contention that the motion for interlocutory review is untimely. This does not, however, detract from the need to have this Board clarify the nature and scope of the issues herein.

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